IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 116 of 2002
With
COMPANY PETITION No. 3 of 2003
With
COMPANY PETITION No. 20 of 2003
With
COMPANY PETITION No. 46 of 2005
With
COMPANY PETITION No. 47 of 2005
With
COMPANY APPLICATION No. 214 of 2005
In
COMPANY PETITION No. 116 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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APRISMA MANAGEMENT - Petitioner(s)
Versus
APPLITECH SOLUTIONS LTD. - Respondent(s)

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Appearance :

MS JIRGA D JHAVERI for Petitioner No(s).: 1.

MR AR GUPTA for Petitioner.
MR DC DAVE for Respondent No(s).: 1.

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CORAM : HON'BLE MR.JUSTICE K.A.PUJ

Date : 20/07/2005

COMMON ORAL JUDGMENT

1. All these Company Petitions are filed by the Petitioning Creditors against the respondent Company for its winding up on the ground that the respondent Company has failed and neglected to discharge its financial liabilities towards the Petitioning Creditors.

2. In Company Petition No. 116/2002, the petitioner has to recover Rs.4,95,600/- from the respondent Company. In Company Petition No. 03 of 2003, the

petitioner who was working with the respondent Company as Group Manager – Business Process and Analysis and Design has to recover an amount of Rs.4,94,500/- towards salary, HRA & other than Basic Salary during the period from March, 2002 to October, 2002. In Company Petition No. 20 of 2003, the petitioner who was working as Deputy General Manager – Software Development with the respondent Company has to recover an amount of Rs.9,04,500/- towards Salary for the period from March, 2002 to November, 2002. In Company Petition No. 46 of 2005, the petitioner who was working as Software Engineer with the respondent Company has to recover an amount of Rs.2.12,473/- towards salary for the period from February 2002 to December, 2002. In Company Petition No. 47 of 2005, the petitioner who was working with the respondent Company has to recover an amount of Rs.1,23,418/- towards salary and other dues.

3. Company Application No. 214 of 2005 is filed by

the Petitioning Creditor in Company Petition No. 116 of 2002 seeking declaration from this Court that transfer, if any, of any software, receivables and contracts by the respondent No. 1 in favour of respondent No. 2 to 5 or any one of them as inoperative, null and void. The applicant has also prayed for permanent injunction against the respondent Company from using or exploiting any of the assets of the respondent No. 1 Company and servicing any contracts entered into between the respondent No. 1 Company and its customers purportedly transfer by the respondent No. 1 Company to the respondent No. 2 or any of its subsidiaries, namely, respondent Nos. 3 to 5.

4. Since, in all, there are five petitions filed against the respondent Company, the facts are taken from Company Petition No. 116 of 2002 which is first in point of time. It is a case of the petitioner that the petitioner Company had received a Purchase Order No. 03/02/04 dated 2nd

March, 2001 from the respondent Company for the purchase of the items mentioned in the said purchase order. The terms of the purchase order clearly specified that Delivery had to be made within 30 days and payment was to be made within 25 days of delivery. On receipt of the said Purchase Order on 02.03.2001, the petitioner had delivered the requisite Software package to the respondent Company as per the requirement of the respondent Company and, as stated in the Purchase Order and thereupon raised Invoice No. 1100004206 dated 02.03.2001 against the respondent Company for a sum of US $ 4,42,600 and another Invoice dated 02.03.2001 for US $ 53,100. After receipt of the goods as per the Purchase Order and the Invoices, the respondent Company became liable to make payment within 25 days of delivery as per its own Purchase Order and assured the petitioner Company that the payment would be made soon on the plea that they were pursuing the matter with their Banker for remittance. The debt was also

confirmed by the respondent Company. The petitioner thereafter issued several letters to the respondent Company for making payment. However, the payment has not been made by the respondent Company. The petitioner thereafter issued Statutory notice on the respondent Company on 16.04.2002 and despite the service of notice, the respondent Company has failed and neglected to pay to the petitioner. Hence, the present petition is filed before this Court.

5. So far as other winding up petitions, namely, Company Petition Nos. 3/03, 20/03, 46/05 & 47/05 are concerned, all the petitioning Creditors are the ex-employees / Officers of the respondent Company and the respondent Company has failed to make the payment of their Salaries and other benefits. Hence, the respective petitions were filed. It is stated in all these petitions that the respondent Company was in dire financial circumstances and the respondent Company has debts

far in excess of its assets. The respondent Company is not having sufficient assets to satisfy its debts and make payment to the Creditors including the petitioners which demonstrate that the respondent Company is commercially insolvent.

6. In Company Petition No. 116 of 2002, notice was issued by this Court on 05.07.2002 and the respondent Company was directed to place on record details about the financial position of the respondent Company. On receipt of the notice, it appears from the record that initially learned Advocate Mr. S.S. Panesar has appeared for the respondent Company. On 04.03.2003, Mr. Panesar has requested the Court to allow him to withdraw his appearance and in his place, Mr. D.C. Dave, learned advocate appeared on behalf of the respondent Company. Thereafter, affidavit is filed by the respondent Company on 27.03.2003 along with which Balance-sheet for the year ended on 30.09.2002 was placed on record. Affidavit-in-

rejoinder is filed by the petitioner on 14.04.2003 and affidavit-in-Sur-rejoinder is filed by the respondent Company on 30.04.2003.

7. During the pendency of the aforesaid petition, two more petitions being Company Petition Nos. 3/2003 & 20/2003 were filed. On 09.09.2003, learned advocate Mr. H.S. Mulia who was appearing on behalf of the respondent Company has requested this Court to allow him to retire from the present proceeding. The Court vide order dated 09.09.2003 has observed that undisputedly, the respondent Company has been served with the copy of the petition much earlier and that too in the month of March, 2003. On earlier occasions, specific statements have been made by the respondent Company and learned counsel was instructed to quote the figure of the amount which can be paid to the petitioners who were the Ex-employees of the Company. However, instead of quoting any figure, learned counsel has requested the Court to

allow him to retire from the proceeding. The Court was, therefore, of the view that the petition deserves to be admitted and accordingly, it was admitted on 09.09.2003. The Court has, however, deferred the order of advertisement.

8. The order of admission passed by this Court in Company Petition No. 3 of 2003 was challenged by the respondent Company in OJ Appeal No. 43 of 2003. The said appeal was dismissed on 12.03.2004 and the Division Bench has observed that the learned Single Judge is seized with the matter as he has admitted the petitions and hence, it is neither desirable not proper for this Court to continue parallel proceedings. The Division Bench has dismissed the appeal on this short ground and observed that as and when the winding up order is passed, it will be open for the appellant Company to challenge the same.

9. After dismissal of the appeal filed by the

respondent Company, Company Petition Nos. 116 of 2002, 03 of 2003 and 20 of 2003 have come up for hearing and this Court has passed an order on 22.06.2004. The Court has observed that since all the three petitions against the same Company are admitted by this Court and appeal is also dismissed and terms of settlement have failed, the order regarding advertisement of admission and final hearing of the petitions is required to be passed. Accordingly, the petitioner was directed to publish the advertisement in “Indian Express” and “Jansatta” - both of Ahmedabad editions. Publication of advertisement in the Official Gazette was dispensed with. The Court has made it clear that in view of the aforesaid order, Company Petition No. 116 of 2002 was also admitted and there was no need to pass separate order of advertisement in Company Petition No. 116 of 2002. The office was directed to place all the three petitions together for final hearing.

10. After admission and advertisement of the aforesaid petitions, two more petitions were filed against the respondent Company being Company Petition Nos. 46 & 47 of 2005. The Court has issued notice on 15.03.2005 in both the petitions. On 04.04.2005, this Court has recorded the statement of Mr. A.R. Gupta, learned advocate appearing for the petitioner that the petitioners have tried to serve the notice at the Regd. office of the respondent Company. The petitioners have found that the Regd. office of the respondent Company is closed and there were two notices affixed on the Regd. office of the respondent Company. Affidavit of service of notice to this effect was also placed on record. Thereafter, the Court has granted permission to serve the respondent Company through affixation. Accordingly, the respondent Company was served through affixation and even the order was passed on 05.05.2005 observing that in view of the fact that Company Petition Nos. 3 & 20 of 2003 have already been admitted and advertised,

there was no need to give any direction in these two petitions. The said two petitions were also ordered to be placed along with these petitions.

11. The Court has thereafter passed an order on 29.06.2005 in Company Application No. 214 of 2004 wherein it is observed that earlier the said application has come up for hearing on 21.06.2005. However, the Court was of the view that since Company Petitions are already admitted and advertised, this application should be heard along with Company Petition No. 116 of 2002 and other cognate matters. Accordingly, the said application as well as all other petitions were directed to be placed for final hearing. The Court has further observed that Mr. D.C. Dave, learned advocate appearing for the respondent Company has already informed the respondent Company that he is retiring from this matter as no instructions have been received by him from the respondent Company. However, it was not known as

to whether the Company was informed by Mr. Dave by Regd. A.D. Post, as neither any letter nor acknowledgment receipt has been produced. The Court has taken the view that till the necessary intimation is produced on record, no cognizance of his retirement could be taken. The Court has however made it very clear that Company Petition Nos. 46 & 47 of 2005 are already admitted by this Court and after service of notice to the Company through affixation, no appearance has been filed by the respondent Company. The Court has also passed an order in Company Application No.214/2005 observing that no notice has been issued by the Court and hence looking to the facts and circumstances of the case, the Court was of the view that before final disposal of the Company Application alongwith the Company Petition, notice is required to be issued to the respondent Company. Accordingly, notice was issued in Company Application No.214/2005 making it returnable on 12.7.2005. In the meantime, ad interim relief in

term of Para-(C) (i) of the Judge's Summons was granted till the next returnable date.

12. Today also, nobody appears on behalf of the respondent Company. From the foregoing facts, it appears to the Court that the respondent Company is not interested in defending the winding up petitions filed against it as nobody appears on behalf of the respondent Company. There are in all five petitions against the respondent Company and the respondent Company has failed to discharge its liabilities towards all these petitioning Creditors. The financial substratum of the Company has virtually gone down. The notices issued by this Court were served through affixation. This itself shows that the Company is virtually closed. There are serious allegations against the respondent Company that it has transferred all its software packages and precisely for this reason, Company Application No. 214 of 2005 was filed before this Court.

13. Having regard to the facts and circumstances of the case and looking to the totality of all these cases, the Court is of the view that the respondent Company is required to be wound up and it is accordingly wound up. The Official Liquidator attached to this Court is hereby appointed as the liquidator of the respondent Company and he is directed to exercise all powers conferred on him under the Provisions of the Companies Act, 1956. He is further directed to take possession of all the movable and immovable assets of the Company after giving due intimation to the Secured Creditors and the Ex-Directors of the Company. He is further directed to collect the details as to which properties were transferred within 12 months from the date of passing of the winding up order and place the report before this Court. Before appointing any Security Agency and/or Valuer for taking inventory, the Official Liquidator is directed to

take prior permission of this Court. He is further directed to invite claims of the Creditors and the Workers forthwith.

14. With this direction and observation, all these Company Petitions are disposed of.

15. Since the petitions are disposed of, Company Application No. 214 of 2005 does not survive and it is accordingly disposed of.

16. Office is directed to place copy of this order in each of these petitions and application.

[K.A. PUJ, J.]

Savariya